

71 FR 30873, May 31, 2006

A-427-820
AR: 2004-2005
Public Document
ADCVD OPS/2: TKS

May 23, 2006

MEMORANDUM TO: David Spooner
Assistant Secretary
for Import Administration

FROM: Stephen Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Administrative Review of Stainless Steel Bar from France

Summary

We have analyzed the case and rebuttal briefs of interested parties in the 2004-2005 review of the antidumping duty order of stainless steel bar from France. As a result of our analysis, we have made changes in the margin calculation for the final results. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from parties:

Comment 1: Level of Trade in the Home Market

Comment 2: Whether to Allow Certain Additions to the U.S. Sales Price

Comment 3: Whether to Collapse Certain Grade Codes for Product Matching

Comment 4: Whether to Recalculate U.S. Inventory Carrying Expenses for the Further Manufactured U.S. Sales

Background

On January 23, 2006, the Department of Commerce (the Department) published the preliminary results in the 2004-2005 antidumping duty administrative review of stainless steel bar from France. See Stainless Steel Bar from France: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 3463 (January 23, 2006) (Preliminary Results). The product covered by this review is stainless steel bar. The period of review (POR) is March 1, 2004, through February 28, 2005.

We invited parties to comment on the Preliminary Results. We received comments from the respondent, Ugitech S.A. (Ugitech), and the petitioners (i.e., Carpenter Technology Corporation, Crucible Specialty Metals Division, Crucible Materials Corporation and Electroalloy Corporation (a division of G.O. Carlson, Inc.)). Based on our analysis of the comments received, we have changed the weighted-average margin from the Preliminary Results.

Margin Calculations

We calculated constructed export price (CEP) and normal value (NV) using the same methodology described in the Preliminary Results, except as follows below:

1. We corrected the programming associated with our analysis of whether Ugitech's home market sales to affiliated customers were made at arm's-length prices by using the appropriate customer code variable. This change corrected an error in the Preliminary Results that caused all of the sales to one home market customer, who was affiliated with Ugitech for only a portion of the POR, to be excluded from the comparison sales data base, rather than only those sales made while it was affiliated with Ugitech. See pages 20-21 of Ugitech's March 1, 2006, case brief (Ugitech Case Brief), and page 10 of Ugitech's June 27, 2005, Section B questionnaire response (QRB).
2. We revised our calculation of the importer-specific assessment rate to correct an error in our Preliminary Results, where we failed to convert the per-pound entered value to a per-kilogram entered value. See Ugitech Case Brief at page 20.

Discussion of the Issues

Comment 1: *Level of Trade in the Home Market*

In the Preliminary Results, we found that: 1) all home market sales (i.e., ex-inventory and ex-mill sales) were made at the same level of trade (LOT); 2) the home market sales were made at a more advanced LOT than the U.S. sales; and 3) a CEP offset to NV was warranted, in accordance with section 773(a)(7)(B) of the Tariff Act of 1930, as amended (the Act), because we had no information to determine an LOT adjustment.

Ugitech contends that there are three LOTs in its home market: 1) ex-mill sales, 2) ex-inventory sales, and 3) ex-inventory sales of special applications (AP) stainless steel bar (SSB). Ugitech claims that the Department erred in its Preliminary Results by finding only one LOT in the home market. Ugitech asserts that the Department has used a three-step evaluation process to determine if multiple LOTs exist, citing Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732 (November 19, 1997) (Steel Plate from South Africa), Final Determination of Sales at Less Than Fair Value: Outboard Engines from Japan, 70 FR 326 (January 4, 2005) and the accompanying Issues and Decision Memorandum at Comment 7, and the Department's regulations at 19 CFR 351.412.

According to Ugitech, this three-step evaluation first determines if there is a difference in the stage of marketing by looking at either the point of distribution where the sales occur (*i.e.*, ex-factory, distributor, wholesaler, retailer, etc.) or the class of customer. Secondly, it evaluates the qualitative or quantitative differences in the selling functions performed by each LOT. Thirdly, it determines if there is a difference in the selling expenses associated with each LOT. Ugitech argues that an examination of its home market distribution process under this three-step evaluation demonstrates that three LOTs exist in its home market.

With respect to the first step of the evaluation, Ugitech maintains that its ex-mill and ex-inventory sales are at two different points in the distribution chain and are made at different stages in the marketing process. According to Ugitech, for its ex-inventory sales, its home market sales department (“Departement Ventes France,” or DVF) acts as a distributor, maintaining an inventory and employing a sales team to sell the product from inventory. In contrast, DVF does not maintain an inventory for the ex-mill sales. According to Ugitech, the ex-mill sales do not enter the chain of distribution (*i.e.*, warehouse inventory) prior to the sale and thus are at a different stage in the marketing process.

With respect to step two of the evaluation, Ugitech claims that there are both quantitative and qualitative differences in the selling functions that are performed for its ex-mill and ex-inventory sales. Ugitech identifies ten selling functions as relevant for the LOT analysis: inventory maintenance, customer sales contact, advertising, freight and delivery, production planning, order evaluation, technical services, computer systems, warranty, and strategic planning and marketing. In the Ugitech Case Brief at pages 5 - 15, Ugitech addresses its claims of quantitative and/or qualitative differences in these selling functions between the ex-mill and ex-inventory sales by generally characterizing the level of each selling activity as “high,” “medium,” or “low.”

As an example, for the selling function of customer sales contact, which is principally performed by DVF for all sales, Ugitech claims DVF performs this function at a high intensity for its ex-inventory customers because they require more interaction to 1) explain the product, 2) follow-up on inquiries to consummate the sale, and 3) collect payment. In contrast, Ugitech claims that DVF performs the customer sales contact function at a medium level of intensity for the ex-mill customers because they purchase large quantities of product at a single time and thus require less interaction.

In a second example, Ugitech explains that the advertising selling function is primarily directed at its ex-inventory customer, while its ex-mill customers are less reliant on advertising. Therefore, Ugitech claims that advertising is performed at a higher level of intensity for ex-inventory customers than for ex-mill customers.

As a third example, Ugitech asserts that the ex-inventory sales require a higher degree of production planning in order to adequately stock the warehouse for immediate delivery. In comparison, the production and planning for the ex-mill sales are done after the buyer makes an inquiry; production begins only after the agreement on the product specifications has been reached and the order has been acknowledged.

For a final example, while Ugitech contends it performs the warranty selling function at a high level of intensity for both ex-mill and ex-inventory sales, it argues that there is a significant difference in the roles that DVF and Ugitech's commercial departments play in processing and paying warranty claims. Ugitech claims that, for ex-inventory sales, DVF acts as a distributor and takes the primary responsibility for analyzing and processing warranty claims, while Ugitech's commercial department is minimally involved in the warranty analysis process. For ex-mill sales, it is Ugitech's commercial department that takes primary responsibility for analyzing and processing the warranty claim. For both types of sales, Ugitech states that its mill has a high level of activity with respect to warranty payment.

With respect to the third step of the evaluation, Ugitech argues that the selling expenses associated with the ex-inventory sales and ex-mill sales are substantially different because the ex-inventory sales require more time and resources than the ex-mill sales. According to Ugitech, a comparison of the reported per-unit amounts for indirect selling expenses, inventory carrying expense, warehousing, credit and warranty across the three claimed LOTs (ex-mill, ex-inventory, and ex-inventory AP sales) demonstrates that the per-unit amounts for selling expenses associated with the ex-inventory sales are more than twice the per-unit amounts for selling expenses associated with ex-mill sales.

Ugitech also contends that its ex-inventory sales of AP SSB are a distinct and different channel of distribution that is at a more advanced stage of marketing than either the standard ex-inventory sales or the ex-mill sales, and thus should be considered as a third LOT in the home market. According to Ugitech, these sales involve greater selling function intensities or an additional level of activity than with standard ex-inventory sales with respect to such selling functions as the evaluation of orders, technical assistance, further manufacture, and customer interaction. For example, Ugitech states that each AP sale order is assigned to an AP technician who controls and monitors the processing of the order. Ugitech states that, because many AP sales require further manufacture, there is a higher level of production planning associated with these sales. Among other assertions, Ugitech also contends that AP sales require a higher degree of technical support and advice to meet the technical needs of the customer, and to evaluate warranty claims.

The petitioners maintain that the Department's preliminary LOT analysis was appropriate and consistent with the LOT analysis in the previous administrative review. The petitioners argue that the alleged distinct selling functions and different marketing stage arguments made by Ugitech were analyzed by the Department in the Preliminary Results and the Department concluded that only one LOT exists in the home market. The petitioners contend that Ugitech has failed to identify any new information or raise any new arguments in this review to support its claim for three LOTs.

Specifically, the petitioners assert that Ugitech has improperly relied on the division of selling functions by its internal departments as the basis of its claim for separate LOTs. The petitioners argue that the LOT analysis cannot be based according to the division of selling functions within a corporate entity, but rather the corporate entity must be viewed as performing all the various selling functions. Thus, the petitioners maintain that the Department appropriately conducted the

LOT analysis by collapsing Ugitech's internal division-based analysis and evaluating Ugitech's LOT claims across the corporate entity. As a result, the petitioners argue that Ugitech's three-step evaluation, contrary to Ugitech's claims, supports the Department's Preliminary Results finding that there is a single LOT in the home market. Considering the functions performed by DVF or other corporate divisions as part of the overall Ugitech corporate entity, the petitioners contend that, by its own admission, Ugitech is acting as its own distributor for its ex-inventory sales. Therefore, the ex-mill and ex-inventory sales are made at the same point in the distribution chain, from Ugitech to its home market customer.

With respect to Ugitech's arguments concerning the nature of the selling functions, the petitioners agree with the Department's Preliminary Results assessment that, on a corporate basis, with the exception of inventory maintenance, all selling functions were performed across all channels of distribution with only slight variances in the levels of intensity for a few sales activities, and that the variances were not so significant as to constitute distinct LOTs. The petitioners add that this finding is consistent with the Department's position in this proceeding, as well as Stainless Steel Bar From Germany: Final Results of Antidumping Duty Administrative Review, 70 FR 19419 (April 13, 2005), Issues and Decision Memorandum at Comment 2, that the inventory maintenance function alone is not sufficient to define a separate LOT. The petitioners further note that Ugitech has made many sales to the same customer on an ex-mill and ex-inventory basis. Therefore, Ugitech's contention that ex-inventory sales require greater customer sales contact because the customers are less sophisticated than ex-mill customers does not withstand scrutiny because in many cases, the two types of sales are made to the same customers.

The petitioners also dispute Ugitech's contention that the differences in selling expenses between the ex-mill and ex-inventory sales support separate LOTs. According to the petitioners, the Department's antidumping duty questionnaire defines indirect selling expenses as fixed expenses that are not traceable in a company's financial record to sales under review. Therefore, the allocation methodology adopted by the company to calculate indirect selling expenses will determine the results. The petitioners state that Ugitech's questionnaire responses suggest that Ugitech did not have the ability to tie certain expenses to particular types of sales and if it did, these expenses should be considered as direct rather than indirect expenses. Moreover, because Ugitech sold on both ex-mill and ex-inventory bases to many of the same customers, the petitioners assert that it does not make sense to claim expenses such as advertising to be different depending on the sales channel when the same customer is involved. In addition, the petitioners note that Ugitech's selling expense analysis includes expenses for items such as warehousing, which the petitioners state that the Department does not consider relevant by itself to the LOT analysis, as the associated expenses are deducted directly from the home market prices.

The petitioners also contend that Ugitech's ex-inventory sales of AP SSB do not constitute a separate LOT because, as articulated by the Department in this proceeding, the LOT analysis is made based on marketing stages and selling functions, not the product type nor end use of the product. The petitioners contend that, as the Department explained in the less-than-fair-value investigation and the previous administrative review, there are no differences in the selling functions or marketing stages when comparing ex-inventory sales of AP SSB to standard SSB. The petitioners point out that the upgrading and special services that distinguish the AP SSB

from the standard SSB are essentially further manufacturing and value added activities that the Department has considered irrelevant to the LOT analysis.

Moreover, the petitioners argue that there is no factual basis for a separate LOT for the ex-inventory AP sales because the evidence on the record does not support Ugitech's claim that these sales were targeted to specific kinds of customers. According to the petitioners, an analysis of Ugitech's home market sales database shows that certain home market customers bought both AP and standard SSB and, in many cases, purchased AP and standard SSB with identical physical characteristics. The petitioners contend that their analysis shows that there is no consistent pattern of price differences between AP SSB and standard SSB with identical physical characteristics.

Department's Position:

As discussed in the Preliminary Results, the information on the record of this review does not support a finding of the three distinct LOTs claimed by Ugitech in the home market. Therefore, for the final results, we agree with the petitioners and continue to find that all home market sales (i.e., ex-mill sales and ex-inventory sales of standard and AP SSB) were made at the same LOT.

Our LOT analysis pursuant to 19 CFR 351.412(c) is explained in detail in the Preliminary Results. Since the Preliminary Results, there has been no additional information placed on the record of this review that would warrant departure from our preliminary analysis. Furthermore, we are unpersuaded by Ugitech's LOT analysis in the Ugitech Case Brief.

Ugitech bases its arguments for considering ex-mill and ex-inventory sales as separate LOTs on the concept that its internal home market sales division, DVF, should be considered as if it were a separate entity from Ugitech. That is, Ugitech asks the Department to treat an integral component of its internal organizational structure almost as if it were an unaffiliated party so that the ex-inventory sales are viewed as sales not made by Ugitech, but rather by DVF. However, our longstanding practice is, as stated in Notice of Final Determination of Sales at Less-Than-Fair-Value: Certain Pasta from Italy, 61 FR 30326, 30331 (June 14, 1996) (Pasta from Italy), that “{w}henver sales within a customer group were made by or through an affiliated company or agent, we “collapsed” the affiliated parties before considering the selling functions performed.” In this case, DVF is not even a separate affiliated legal entity, but rather it is a division within Ugitech. Therefore, as the petitioners note, whether or not the sales are made ex-mill or ex-inventory, all of the home market sales are made directly from Ugitech to its home market customers. In this regard, all of the sales are at the same point in the distribution chain.

Ugitech's arguments regarding the differences in selling functions between the claimed LOTs again rest largely on viewing DVF as if it were an unaffiliated party. For example, as noted above, Ugitech acknowledges that, on a corporate level, it provides the same level of warranty service to all sales channels. Nevertheless, it contends that, because warranty services in some cases are provided through one division (DVF), and in other cases through a different division, it performs this selling function at different levels of intensity according to the claimed LOT. This

distinction is without merit. The Department's focus of analysis, as articulated in Pasta from Italy, is the collapsed corporate entity. It is irrelevant whether a function is performed by DVF or any other Ugitech organizational unit; what is relevant is whether or not a particular function is performed by any part of Ugitech and at what level of intensity. Accordingly, the analysis conducted in the Preliminary Results, examining the selling functions on a collapsed, corporate-wide basis, was appropriate. Based on that approach, as we detailed in the Preliminary Results, we continue to find that, apart from inventory maintenance, Ugitech performed selling functions across all channels of distribution with only slight variances in the levels of intensity for a few of the sales activities, and that these variances are not significant enough to constitute distinct LOTs. We note as well that the petitioners' sales analysis, pointing out that Ugitech sells to many customers through both sales channels, further undermines Ugitech's claims, because it is difficult to maintain that Ugitech provides one level of technical services or advertising to ex-inventory customers, and a different level of services to ex-mill customers, when many of the customers are the same.

With respect to alleged differences in selling expenses, we agree with the petitioners that these claims do not provide a proper basis for establishing separate LOTs. As a threshold matter, Ugitech has failed to demonstrate that it even incurs indirect selling expenses on the basis of the claimed LOT. Ugitech reported at page 40 of the QRB and Appendix SB-5 of the October 5, 2005, supplemental questionnaire response (SQR2), that home market indirect selling expenses incurred by the DVF unit (INDIRS3H and INDIRS4H) are calculated based on an allocation of the expenses according to the tonnage shipped for each sales channel, rather than derived from expense accounts specifically dedicated to these channels. Ugitech confirmed that the expenses are calculated based on weight-based allocations, rather than specific expense accounts (see Memorandum to the File dated November 30, 2005). Although the analysis in the Ugitech Case Brief relies on the recalculated, single DVF indirect selling expense factor, the alleged differences in indirect selling expense amounts are not an indication that ex-inventory sales require more time and resources than ex-mill sales, as Ugitech claims, but rather a function of the expense allocation, as indicated by the petitioners.

The Ugitech Case Brief does not explain the relevance of the other selling expenses in supporting its claimed LOTs. In the case Ugitech cited to support its analysis, Professional Electric Cutting Tools from Japan: Final Results of Antidumping Duty Administrative Review, 63 FR 6891, 6894 (February 11, 1998), where the Department accepted the differences in the reported home market indirect selling expenses according to LOTs, only indirect selling expenses are discussed. Nevertheless, we note that the inclusion of the other selling expenses in Ugitech's analysis provides no further support for Ugitech's LOT arguments. Ugitech reported at pages 36-37 of the September 21, 2005, supplemental questionnaire response (SQR) that there is no difference in warranty terms according to sales channel. The per-unit warranty expense is based on an allocation across all home market sales (see SQRB at page 51 and Appendix SB-3). Imputed credit expenses are representative of customer payment terms, not selling functions. With respect to warehousing and inventory carrying expenses, as we stated in the Preliminary Results, we acknowledge that there is a difference in the selling function of pre-sale warehousing, which

is offered for ex-inventory sales and not for ex-mill sales, but that this selling activity alone is not a sufficient basis to distinguish separate LOTs between ex-mill and ex-inventory sales.

Finally, with respect to ex-inventory AP sales, Ugitech offers no new perspective on our findings in the Preliminary Results and the previous segments of this proceeding. We reiterate our previous determinations that

the extra operations which the AP department performs (which the respondent claims translate into a LOT distinct from the affiliate's non-AP department sales made from inventory) are manufacturing operations which should not be taken into account in our LOT analysis.... These manufacturing steps are no more selling functions than any of the prior steps in the manufacturing process. We do recognize that in arranging for these additional manufacturing operations, the AP department needs to spend more time with the customer as a result of the need to obtain in the majority of cases additional certifications through third parties for any additional work performed on the SSB purchased sold through the AP department. Nevertheless, ...we do not find that additional manufacturing and the need to obtain certifications to complete such work a sufficient basis for treating {Ugitech's} ex-inventory non-AP sales and ex-inventory AP sales as separate LOTs.

See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From France, 67 FR 3143 (January 23, 2002), Issues and Decision Memorandum at Comment 6.

Comment 2: Whether to Allow Certain Adjustments to the U.S. Sales Price

Ugitech's reported adjustments to U.S. price include:

- a) Freight revenue (FRTREVU), for separate charges invoiced to customers for transporting merchandise from the U.S. affiliate's facility to the customer (see June 27, 2005, Section C response (QRC) at page 21);
- b) Other revenue (OTHREVU), for "minimum lot charges" invoiced to the customer (see QRC at page 21, and October 5, 2005, response (SQR2) at page 62); and
- c) Other discounts (OTHDISU), for the net POR over- or under-payment recorded in Ugitech's accounts receivable records for open accounts (see QRC at pages 23-24 and page 49 of the September 21, 2005, response (SQR1)).

These adjustments were included in the Preliminary Results calculation of Ugitech's CEP.

The petitioners argue that the Department should disallow the freight and other revenue adjustments to U.S. price for the final results, and disallow the other discount adjustment when it results in an addition to U.S. price. With respect to freight revenue, the petitioners contend that Ugitech has failed to demonstrate that the freight revenue amounts reported for the applicable sales were associated with the freight expenses for those sales. In particular, the petitioners contend that the reported freight revenue amounts are sometimes aberrationally high relative to the reported per-unit freight expenses and gross unit prices. As a result, the petitioners suggest

that the reported freight revenue is associated with services not related to the transportation of the subject merchandise. According to the petitioners, because the record does not support the reported freight revenue, the Department should deny this adjustment.

With respect to the other revenue amount, the petitioners argue that Ugitech failed to demonstrate that the revenue received was due to “minimum lot charges.” The petitioners point to examples of U.S. sales where the sales quantity appeared to be in excess of a quantity that would be assessed such a charge. The petitioners suggest that the other revenue charged was for special services not described in the response.

With respect to the “other discount” amount, where the amount reflects an overpayment, the petitioners maintain that, because Ugitech reports that it would credit the amount to a subsequent invoice or refund it to the customer, these overpayments are similar to temporary credit in Ugitech’s accounts receivables records for the customer. According to the petitioners, these amounts would not be recognized as part of the U.S. sales price. Therefore, the petitioners assert that the Department should disallow all OTHDISU amounts that are additions to U.S. price.

Ugitech contends that the Department properly included all of these adjustments in its Preliminary Results calculation. Regarding freight revenue, Ugitech states that the adjustment data was taken directly from its financial records, that information is verifiable, and there is no evidence on the record that the information is inaccurate. Ugitech notes that it has not provided additional information to support its reporting of freight revenue because it has not been requested to do so by the Department.

With respect to “other revenue,” Ugitech acknowledges that, while the overwhelming majority of the reported amounts do reflect minimum lot charges, the OTHREVU amounts for a small number of sales may also include revenue from other minor charges. At any rate, Ugitech asserts that there is no basis for excluding this revenue associated with its U.S. sales from the margin calculation.

Finally, concerning the OTHDISU amounts, Ugitech states that it explained in detail in the November 18, 2005, response (SQR3) that the reported amounts reflect overpayments and underpayments associated with its U.S. sales that are not otherwise accounted for in the questionnaire responses. While Ugitech expects these accounts receivable differences to be reconciled eventually outside the POR, during the POR the final resolution of these balance differences is not known and thus the real price for the sales at issue, which has been changed by these underpayments and overpayments, must be reflected in its revenue totals. Accordingly, the Department should continue to include this adjustment. However, Ugitech adds that, if the Department changes its position, there is no justification for excluding only the overpayments from its CEP calculation, as the petitioners contend. In that instance, Ugitech asserts that the Department must treat the overpayments and underpayments in the same manner.

Department's Position:

We continue to include these adjustments to Ugitech's U.S. price in our CEP calculation as we find no basis to disallow any of these adjustments. With regard to the freight revenue and other revenue amounts, we note that our consistent practice is to calculate both U.S. price and NV starting from the gross price on the invoice, and to make adjustments for revenue and expense items to that gross price in order to arrive at the net price, rather than beginning with a net price. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador, 69 FR 76913 (December 23, 2004), Issues and Decision Memorandum at Comment 17, and Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Live Swine from Canada, 69 FR 61639, 61643 (October 20, 2004).

As reported at QRC pages 20-21, the base price recorded on the invoice to the customer, and reported as the gross unit price in the questionnaire response, does not include freight revenue, surcharges, and minimum lot charges shown as separate line items on the invoice. In order to reflect the total amount invoiced to the customer in connection with the sale, these adjustments must be added to the starting (gross) price.

The petitioners do not dispute that Ugitech charged its customers these separate amounts. The petitioners' objection is that the amounts reported in some cases do not appear to sufficiently tie to an expense or service. However, in determining whether or not to grant these invoice-related adjustments, the Department does not require parties to reconcile a given revenue item with the corresponding expense; the Department's concern has been with respect to confirming that separate revenue items listed on the invoice are included in the total amount due from the customer. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France, 67 FR 78773 (December 26, 2002), Issues and Decision Memorandum at Comment 7. The Department has adjusted for freight revenue even when no freight expense was incurred when it was demonstrated that the customer paid the freight revenue amount in connection with the sale of the merchandise. See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Canada, 67 FR 55782 (August 30, 2002) (Steel Wire Rod from Canada 2002), Issues and Decision Memorandum at Comment 5.

It is not relevant whether the freight revenue is roughly equal to the freight expense incurred, or that a sale quantity must be under a particular level for a "minimum lot surcharge." What is relevant is that the customer was billed for an invoice total that included these amounts, and that it paid that total. Put another way, if the customer is billed a total of \$125 for the merchandise and its delivery to the customer's facility, and it costs the seller \$10 to transport the product, it is not material that the seller chooses to bill the customer \$90 for the product and \$35 for the freight fee, rather than \$115 and \$10, respectively; the customer still owes the seller \$125 for the delivered product, and the seller still receives \$125 in revenue from the customer. As we stated in the Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada, 59 FR 18791, 18796 (April 20, 1994), "{w}here freight and movement

charges are not included in the price, but are invoiced to the customer at the same time as the charge for the merchandise, the Department considers the transaction to be similar to a delivered price transaction since the seller may consider its return on both transactions in setting price.”

In the previous review, the petitioners challenged Ugitech’s claimed “early payment discount” deducted from the price of home market sales for which the customer did not appear to be paid early. The Department determined that:

Our preliminary calculation of NV appropriately deducted the discounts reported by UGITECH from the home market gross unit price. The facts of the record show that these discounts were applicable to certain home market sales made during the POR and reflected a reduction to the net sales revenue from these sales, a fact undisputed by the petitioners. In response to a supplemental questionnaire concerning the nature of these discounts, UGITECH explained that regardless of the actual payment period for the sales to which they apply, these discounts were granted as agreed.... Based on our review of the sales documentation..., we confirmed that the reported discounts were, in fact, deductions to the sales price as noted on the invoice. Therefore, irrespective of UGITECH’s classification of these discounts as “early payment discounts” or otherwise in its response, in accordance with our standard methodology in calculating net price under 19 CFR 351.401(c), we have continued to deduct these discounts in the final results calculation of the net home market price used for NV.

See Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review, 70 FR 46482 (August 10, 2005) (AR2 Final Results), Issues and Decision Memorandum at Comment 6.

The petitioners’ basis for objection in this review with respect to Ugitech’s claimed freight revenue and other revenue adjustments is similar, except that additions to U.S. price, rather than deductions from home market price, are at issue. As in the previous review, we disagree with the petitioners and continue to make the appropriate adjustments in the final results of this review.

With respect to the other discount adjustment, we agree with Ugitech that it is appropriate to treat both positive and negative amounts for this adjustment in the same manner, rather than make the adjustment only for negative amounts as advocated by the petitioners. That is, the Department should either accept or reject this adjustment in its entirety, based on the facts of record. We note that, as indicated by Ugitech at page 4 of SQR3, the total value of this adjustment is so small that it is well under 0.33 percent ad valorem, the Department’s threshold under 19 CFR 351.413 for disregarding insignificant adjustments. Accordingly, whether or not the adjustment is included will not have a significant impact on the margin. Nevertheless, as we found in the Preliminary Results that Ugitech’s representation of the adjustment in SQR3 was reasonable and consistent with its reporting methodology, and because the petitioners have not provided a compelling reason for disregarding both the positive and negative adjustment amounts, we find no basis to alter our treatment of this adjustment for the final results.

Comment 3: Whether to Collapse Certain Grade Codes for Product Matching

The petitioners allege that Ugitech has created separate grade codes for certain products that are identical or nearly identical in chemical composition with certain other products. Specifically, the petitioners challenge Ugitech's creation of separate grade codes for two pairs of products: grade codes 0290 and 0295 (hereafter "Pair A"), and 1050 and 1060 ("Pair B"). The petitioners add that Ugitech has assigned grade codes based on end use, rather than physical characteristics, citing as an example a comparison between grade codes 0265 and 0295, for which the petitioners contend Ugitech has distinguished on the basis that 0295 is sold to the aerospace industry. Accordingly, the petitioners assert that the Department should combine these product pairs for purposes of product matching.

Ugitech responds that the petitioners have failed to provide any reason why these grade code pairs should be collapsed. Ugitech contends that the petitioners' argument regarding end use is irrelevant because the petitioners' example compares grade codes 0265 and 0295, rather than Pair A. Therefore, consistent with the previous administrative review, which noted the difference in the nitrogen specification for Pair A and the difference in American Iron and Steel Institute (AISI) grade classifications for Pair B, Ugitech asserts that the Department should continue to accept the grade code pairs at issue as distinct products for product matching purposes.

Department's Position:

We agree with Ugitech. Consistent with our decision in AR2 Final Results, we continue to accept Ugitech's reporting of the grade pairs 0290 and 0295, and 1050 and 1060 as unique grades for purposes of product matching for the final results. As discussed in Comment 3 of the accompanying Issues and Decision Memorandum of the AR2 Final Results, grade codes 0290 and 0295 differ in physical characteristics with respect to chemical composition because grade code 0290 includes a specification for the inclusion of nitrogen, while 0295 does not. Grade codes 1050 and 1060 represent products of different AISI grades; the Department has consistently maintained in this proceeding and the companion stainless steel bar proceedings that products of different AISI grades must be reported with unique grade codes. Ugitech's description of these product specifications has not changed for this review (see QRB at Appendix B-2), nor have the petitioners offered a sufficient basis for overturning our decision from the previous review.

Comment 4: Whether to Recalculate U.S. Inventory Carrying Expenses for the Further Manufactured U.S. Sales

The petitioners argue that the Department should recalculate the U.S. inventory carrying expense (INVCARU) for further-manufactured U.S. sales because the reported INVCARU expense calculation, based on the Ugitech transfer price, does not take into account the entire inventory value of these sales. The petitioners contend that, because the further manufacturing occurred when the subject merchandise was a part of the inventory of Ugitech's U.S. affiliate, Ugine

Stainless & Alloys, Inc., (US&A), Ugitech should use the sum of the further manufacturing cost and the transfer price as the inventory value to calculate the INVCARU expense for these sales. Citing Steel Wire Rod from Canada 2002, the petitioners contend that, when the subject merchandise is processed in the United States before being sold to the U.S. customer, it is the Department's practice to include the further manufacturing cost as part of the total cost to the company, i.e., its inventory value, to calculate the INVCARU expense.

Ugitech argues that the Department should not add the amount of the further manufacturing to the transfer price and recalculate INVCARU. According to Ugitech, when US&A sells subject merchandise that is further processed, the SSB is generally taken out of the U.S. warehouse, shipped to a subcontractor's facility to be further processed, and then delivered directly to the customer. Ugitech maintains that the SSB generally does not re-enter US&A's inventory. Therefore, Ugitech argues that adding the further manufacturing cost to the transfer price to calculate INVCARU would improperly distort the value of the inventory carrying cost for these sales.

Department's Position:

We agree with Ugitech that it is not appropriate to include the cost of further manufacturing in the calculation of INVCARU for these sales. According to Ugitech, during the POR, all the further manufacturing activities were performed by subcontractors. After the subject merchandise was further processed, the subcontractors generally shipped the SSB directly to the customer. See June 27, 2005, Section E questionnaire response at page 1 and SQR at page 55. Because the evidence on the record indicates that the further-manufactured SSB does not normally re-enter US&A's inventory, we find no basis to add the further manufacturing cost to US&A's inventory value, which is represented by the Ugitech transfer price.

We note that the petitioners' reliance on Steel Wire Rod from Canada 2002 to support its contention that the cost of further manufacturing should be included in the inventory value for calculating INVCARU is misplaced. In that case, a respondent calculated the INVCARU expense for its further-manufactured sales by using an inventory value based solely on the further manufacturing cost. The Department stated that the actual cost of the merchandise as it enters the subsidiary's inventory, not the further manufacturing cost, was the proper basis on which to calculate INVCARU. Because the transfer prices of the further-manufactured sales were not on the record of that case, the Department relied on the cost of manufacture to recalculate INVCARU. See Steel Wire Rod from Canada 2002 at Comment 2 of the accompanying Issue and Decision Memorandum.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margin for the reviewed firm in the Federal Register.

Agree ____

Disagree ____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)